

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DANIEL G. HENDERSON,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 51440</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 2, 2010, Sondra W. Mercier and Louesa Maricle presiding. Mr. Daniel G. Henderson, Petitioner, appeared pro se. Respondent was represented by James Burgess, Esq. Petitioner is protesting 2008 actual value and classification assigned to the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lot #2 Jaidinger Villas, Westminster, CO and
a portion of Lot 40, Mandalay Gardens, Unincorporated Jefferson County
(Jefferson County Schedule Nos. 450722 and 194499)**

The subject property consists of two parcels of land. The first parcel, identified as Schedule No. 450722, is a 2.3-acre site located at the northeast corner of 105th Avenue and Balsam Street within the Westminster city limits. The second parcel, identified as Schedule No. 194499, is a small tract containing 609 square feet located in the intersection of 105th Avenue and Balsam Street in an unincorporated area of Jefferson County. The southwest corner of Schedule No. 450722 touches the northeast corner of Schedule No. 194499.

Petitioner owns two lots at the southeast corner of 105th Avenue and Balsam Street. The east lot (identified as Schedule No. 409997) is improved with Petitioner’s residence and the adjoining west lot (identified as Schedule No. 409996) is vacant land used in conjunction with the improved parcel. Both of these parcels have residential classification and are not the subject of this appeal, but are integral to the basis for the protest.

The smaller of the two subject tracts, Schedule No. 194499, is located at the intersection of 105th Avenue and Balsam Street. Balsam Street ends at the northern boundary for Schedule No. 194499. 105th Avenue ends at the eastern boundary for Schedule No. 194499. The south boundary of Schedule No. 194499 is adjacent to the northwest portion of Petitioner's residential property. Schedule No. 194499 was owned for many years by Petitioner's mother, Pearl Loretta Henderson. On January 1, 2008, the assessment date of the 2008 tax year assessment, this subject parcel was owned by Mrs. Henderson's estate. According to testimony, title of this parcel was transferred to Petitioner on January 31, 2008. Petitioner also testified that the County reduced the value of this parcel in 2008 from \$600.00 to \$0.00 in what he believes is a step toward taking the parcel from him.

Subject Schedule No. 450722 is located at the northeast corner of 105th Avenue and Balsam Street to the north of Petitioner's residence. It is separated from Petitioner's residential property by 105th Avenue, a county road. Petitioner purchased this lot in 2006 for his family's personal use and testified that it has been used for riding all terrain vehicles (ATVs), baseball, and other outdoor recreation pursuits. It has also been used to raise animals for 4H activities, and to shelter, graze, train, and ride the family's horses. Improvements on this parcel were only minor structures to support these activities. The vacant portion of his existing residential property is also used to support the family's animals.

The northeast corner of Schedule No. 194499 touches the southwest corner of subject Schedule No. 450722. Because Schedule No. 194499 is contiguous to Petitioner's residential property, and it touches Schedule No. 450722, Petitioner contends that the subject parcels are both contiguous to and integral to his residential property.

Balsam Street and 105th Avenue are both unpaved county roads. Petitioner testified that the County maintains Balsam Street north of 105th Avenue but does not maintain the roadway that continues south of the north edge of 105th Avenue because that extension of Balsam Street is located initially on subject Schedule No. 194499 and then on Schedule No. 409996, the western portion of Petitioner's residence site. In this vicinity, the County does not maintain 105th Avenue. Petitioner has lived at this location for 49 years and has never seen the County grade, gravel, or plow snow on 105th Avenue. Petitioner, with occasional help from neighbors, performs all plowing that is necessary to keep 105th Avenue passable in winter, grades the road, and occasionally provides gravel.

Petitioner contends that the subject parcels qualify as residential land because they are contiguous to his existing residential property through subject Schedule No. 194499 and are used in conjunction with the residential improvements. For the reasons stated, Petitioner is requesting that the classification of the subject parcels be reclassified from vacant land to residential status. Petitioner is also requesting that the 2008 actual value for subject Schedule No. 194499 be increased from \$0.00 to \$600.00.

Tammy J. Crowley of the Jefferson County Assessor's Office testified as a witness for Respondent. Ms. Crowley testified that subject Schedule No. 194499 was not included when the land to the southwest was re-platted as Mandalay Gardens Exemption Survey No. 4 in 1992. There are 5 homes to the east of the 105th Avenue and Balsam Street intersection and 3 homes to the south

that must use this portion of the road to gain access to their properties. According to Ms. Crowley, Jefferson County Road and Bridge has verified that this part of the road is maintained by the County.

Respondent contends that Schedule No. 194499 does not qualify for residential classification according to the Assessor's Reference Library (ARL) for the following reasons: (1) it is not used in conjunction with Petitioner's improved residential property because it is part of the road that provides access to eight other homes; (2) it was deemed not to be an integral part of Petitioner's residence because he excluded it from the platting process in 1992; (3) the primary purpose of the parcel is as a road, and it does not offer any enjoyment or support for the residence located on Lot 2 of Mandalay Gardens (where Petitioner's residence is located); and (4) the subject parcel would likely not be transferred with the residence located on Schedule No. 409997. Respondent contends that Schedule No. 194499 is part of a county maintained road, and therefore should be classified as vacant land and assigned no value to the parcel.

Ms. Crowley testified that prior to August 2006, subject Schedule No. 450722 was part of a larger parcel of land that included a residence. In 2006, the property was platted dividing the larger parcel into two legal parcels. Respondent contends that this subject parcel does not qualify for residential classification according to the ARL for the following reasons: (1) the subject parcel is not contiguous to land used for a residence; (2) the subject parcel would likely not be sold with the residence across the street (Petitioner's residence) because it is a legal building site and would not be economically feasible to be sold as one unit; and (3) the land is not an integral part of the residence as it is not necessary for the support and enjoyment of the residence located across the street. This is evident as it was purchased at a later date.

Respondent assigned a 2008 actual value of \$240,130.00 and vacant land classification to Schedule No. 450722. Respondent assigned a 2008 actual value of \$0 and vacant land classification to Schedule No. 194499.

Section 39-1-102(14.4), C.R.S. defines "residential land" as "a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon."

Petitioner did not present sufficient probative evidence and testimony to prove that either of the subject parcels qualify for residential classification as an individual parcel.

Therefore, the subject parcels must be contiguous to parcels of land under common ownership with Petitioner's residential property in order to be considered residential land. The subject parcels and the land upon which Petitioner's residential improvements are located must also be used as a unit in conjunction with Petitioner's residential improvements.

According to Petitioner's testimony, Petitioner did not have title to subject Schedule No. 194499 on January 1, 2008, the assessment date of the 2008 tax year assessment. Therefore, this parcel did not have common ownership with Petitioner's residential property at that time. Accordingly, the Board concludes that Schedule No. 194499 does not qualify as residential land as defined by Section 39-1-102(14.4), C.R.S.

Subject Schedule No. 450722 is under common ownership as Petitioner's residence, but is separated from the residential property by a County road utilized by other residents in the area, so is not contiguous to the residential property on its own or through a parcel under common ownership. For this reason, the Board concludes that this parcel does not qualify as residential land as defined by Section 39-1-102(14.4), C.R.S.

Respondent presented sufficient probative evidence and testimony to demonstrate that the subject parcels were correctly classified for tax year 2008.

Regarding Petitioner's request that the actual value for Schedule No. 194499 be increased from \$0.00 to \$600.00, Colorado law does not allow a valuation to be adjusted to a value higher than the valuation set by the county board of equalization except in limited circumstances that are not present in this case. See Section 39-8-108(5)(a), C.R.S.

ORDER:

The petition to reclassify the subject parcels from vacant land to residential land is denied. The request to increase the 2008 actual value for subject Schedule No. 194499 from \$0.00 to \$600.00 is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

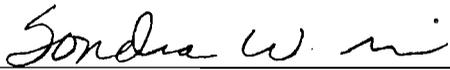
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 16th day of March 2010.

BOARD OF ASSESSMENT APPEALS



Sondra W. Mercier



Louesa Maricle

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Heather Flannery

